



COUNCIL MINUTES

June 22, 2009

The City Council of the City of Mesa met in a Study Session in the lower level meeting room of the Council Chambers, 57 East 1st Street, on June 22, 2009 at 4:02 p.m.

COUNCIL PRESENT

Mayor Scott Smith
Alex Finter
Kyle Jones
Dennis Kavanaugh
Dave Richins
Scott Somers

COUNCIL ABSENT

Dina Higgins

OFFICERS PRESENT

Christopher Brady
Debbie Spinner
Linda Crocker

Mayor Smith excused Councilmember Higgins from the entire meeting.

(Agenda items 2 through 5 were considered beginning at 4:02 p.m., prior to convening the Executive Session at 4:42 p.m., but for purposes of clarity the items will remain as listed on the agenda.)

It was moved by Vice Mayor Jones, seconded by Councilmember Somers, that the Council convene an Executive Session.

1. Convene an Executive Session.

- a. Discussion or consultation with designated representatives of the City in order to consider the City's position and instruct the City's representatives regarding negotiations for the purchase, sale, or lease of real property (A.R.S. §38-431.03A (7)). Discussion or consultation with the City Attorney in order to consider the City's position and instruct the City Attorney regarding the City's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. §38-431.03A (4)).

1. Dobson Police Substation

2. Review items on the agenda for the June 22, 2009 Regular Council meeting.

All of the items on the agenda were reviewed among Council and staff and the following was noted:

Conflicts of interest: None

Items added to the consent agenda: 12d

Items removed from the consent agenda: None

3. Hear a presentation, discuss and provide direction on the noise ordinance.

Police Staff Attorney Nancy Sorensen addressed the Council and noted that the City currently has excessive noise and loud party ordinances. She advised that staff is proposing amendments to the ordinances in order to improve the effectiveness for law enforcement and to clearly define the community standard for acceptable conduct with regard to noise levels.

In response to a question from Mayor Smith, Ms. Sorensen clarified that staff is proposing to rewrite both ordinances.

Ms. Sorensen displayed a PowerPoint presentation (a copy is available for review in the City Clerk's Office) and said that she would first address the excessive noise ordinance, which does not apply to everyday noise. She advised that the standard would be based on reasonableness, and she explained that loud, excessive or disruptive noise is prohibited when it is intermittent or continuous for a period of 15 minutes or more, or when it occurs between the hours of 10:00 p.m. and 6:00 a.m. and exceeds the property line of the area in which it is occurring and disturbs the peace and quiet of the neighborhood or a person of reasonable sensibilities. Ms. Sorensen stated that three types of exemptions are included in the ordinance:

- General exemptions for everyday activities associated with the Fire and Police Departments.
- Temporary exemptions authorized by the City Manager.
- Special event permits.

Discussion ensued relative to the fact that the police officer at the scene would determine who is the responsible party; that a graduated fine schedule that increases for subsequent calls to the same address is proposed; that a violation of the ordinance would be a civil infraction resulting in a fine rather than the current criminal misdemeanor which could result in a jail sentence; that neighbors making a complaint were reluctant to follow through on criminal charges or testify in court; and that the officer issuing the citation for a civil infraction could testify in court.

Vice Mayor Jones explained that although a victim is required to press charges for a misdemeanor, a police officer can issue a citation for a civil infraction in a process that is similar to issuing a traffic ticket.

Mayor Smith noted that the proposal assesses a more reasonable penalty for this type of infraction and simplifies the enforcement of the regulation.

Ms. Sorensen reported that the existing "loud party" ordinance has had limited success because the police do not have the authority to disperse the individuals creating the problem. She said that the proposed "unruly gatherings" ordinance is similar to the noise ordinance in that it is based on a standard of reasonableness, imposes similar fines and stipulates that a violation is a civil infraction rather than a criminal offence.

Responding to a question from Mayor Smith, Ms. Sorensen stated that the proposed ordinance defines a "gathering" as a group of five or more people.

Additional discussion ensued relative to the fact that a group of more than five individuals could conduct a protest without being unruly; and that a protest would only be considered unruly if it obstructed traffic, intruded on the rights of others or incited violence.

Police Chief George Gascón stated that a political protest has a higher level of constitutional protection than a group of individuals holding a party.

Councilmember Kavanaugh noted that the ordinances would generally apply to a private gathering at a residence or a place of business.

Chief Gascón advised that police officers are trained with regard to First Amendment rights and are able to distinguish between a protest and an unruly gathering.

Councilmember Kavanaugh reported that the Public Safety Committee reviewed the proposals at a May meeting and recommend approval.

Vice Mayor Jones said that as a resident of a neighborhood where excessive noise is present, he was in favor of providing police officers with the tools to address the problems. He added that the proposed ordinances are important to his neighborhood and to the people he serves, and he thanked staff for their efforts.

In response to a question from Councilmember Richins, Ms. Sorensen clarified that excessive noise could occur before 10:00 p.m. or at any time that the noise is intermittent or continuous for fifteen minutes or more.

Chief Gascón concurred that a violation could occur at any time of the day if the noise is clearly excessive and the noise is transmitted beyond the property line.

Councilmember Somers noted that the Council has endorsed a vertical integration of uses in some areas, and he expressed concern that developments with housing on upper floors and businesses on the lower levels could generate noise complaints.

Ms. Sorensen stated the opinion that the ordinances include sufficient exemptions that allow for these types of uses.

Chief Gascón added that the issue should be addressed during the licensing process.

City Attorney Debbie Spinner recommended that the ordinance include language that exempts a business from the provisions of the noise ordinance when the business has received a permit for outdoor music through the zoning process.

City Manager Christopher Brady reported that the City of Fort Collins, Colorado, has implemented a process in which individuals register a party with the City in advance and agree to comply with their rules. He explained that when a noise complaint is received for that address, the contact person is notified by phone rather than sending an officer to the location. Mr. Brady added that if complaints continue to be received, an officer is dispatched and fines may be levied. He noted that the fines for violations are more severe if the party is not registered with the City.

Mayor Smith thanked staff for the presentation. He noted that the concurrence of the Council is that staff is directed to move forward to prepare the ordinances and to incorporate the changes discussed during this meeting.

4. Hear reports on meetings and/or conferences attended.

Mayor Smith: U.S. Conference of Mayors (appointed to the Advisory Board).

The New Leaf's La Mesita Family Center with Congressman Harry Mitchell and U.S. Commerce Secretary Gary Locke.

Councilmember Somers: Regional Public Transportation Authority (RPTA) meeting.

5. Scheduling of meetings and general information.

City Manager Christopher Brady stated that the meeting schedule is as follows:

Thursday, June 25, 2009, 7:30 a.m. – Study Session

Wednesday, July 1, 2009, TBA – Study Session

Wednesday, July 1, 2009, 5:45 p.m. – Regular Council meeting

Wednesday, July 8, 2009, TBA – Study Session

Wednesday, July 8, 2009, 5:45 p.m. – Regular Council meeting

6. Adjournment.

Without objection, consideration of agenda items 2 through 5 concluded at 4:42 p.m. and the Study Session adjourned at 5:10 p.m. at the conclusion of the Executive Session.

SCOTT SMITH, MAYOR

ATTEST:

LINDA CROCKER, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 22nd day of June, 2009. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

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